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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
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12 RICHARD LAMAR TAYLOR,

13 Plaintiff,

14 v.

15 WASHINGTON DEPARTMENT OF
16 CORRECTIONS, STATE OF
17 WASHINGTON,

18 Defendants.

19 CASE NO. 3:20-CV-5704-RAJ-DWC

20 ORDER TO FILE AMENDED
21 COMPLAINT

22 Plaintiff Richard Lamar Taylor, proceeding *pro se* and *in forma pauperis*, filed this civil
23 rights complaint under 42 U.S.C. § 1983. Having reviewed and screened Plaintiff's Complaint
24 under 28 U.S.C. § 1915A, the Court declines to serve the Complaint but provides Plaintiff leave
to file an amended pleading by September 18, 2020, to cure the deficiencies identified herein.

25 **I. Background**

26 Plaintiff, who is incarcerated at Coyote Ridge Corrections Center, alleges the Washington
27 State Department of Corrections ("DOC") and the State of Washington have acted with
28 negligence in failing to provide adequate care during the Covid-19 pandemic. Dkt. 7. Plaintiff

1 states he was transferred with other inmates in a vehicle that did not allow for social distancing.
2 *Id.* He also states he suffered from Covid-19 symptoms, but was not tested. *Id.*

3 **II. Discussion**

4 Under the Prison Litigation Reform Act of 1995, the Court is required to screen
5 complaints brought by prisoners seeking relief against a governmental entity or officer or
6 employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must “dismiss the
7 complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to
8 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
9 who is immune from such relief.” *Id.* at (b); 28 U.S.C. § 1915(e)(2); *see Barren v. Harrington*,
10 152 F.3d 1193 (9th Cir. 1998).

11 Plaintiff’s Complaint suffers from deficiencies requiring dismissal if not corrected in an
12 amended complaint.

13 A. Improper Defendants

14 Plaintiff names only the DOC and State of Washington as Defendants in this action. *See*
15 Dkt. 7. The DOC and the State of Washington are not a proper defendants. Section 1983 applies
16 to the actions of “persons” acting under the color of state law. “Neither states, nor entities that
17 are arms of the state, are ‘persons’ for purposes of § 1983.” *Johnson v. Washington*, 2019 WL
18 5223048, at *1 (W.D. Wash. Sept. 17, 2019), *report and recommendation adopted*, 2019 WL
19 5213116 (W.D. Wash. Oct. 16, 2019); *see also Will v. Michigan Dep’t. of State Police*, 491 U.S.
20 58, 65, 71 (1989). Additionally, there is no evidence the State of Washington has waived its
21 Eleventh Amendment immunity in federal courts. Therefore, the State of Washington and the
22 DOC cannot be sued under § 1983. As Plaintiff has not named a proper defendant in this action,
23 his claims fail as a matter of law.

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1 B. Failure to State a Claim

2 Furthermore, Plaintiff has failed to state a claim upon which relief can be granted. In
 3 order to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must show: (1) he suffered a
 4 violation of rights protected by the Constitution or created by federal statute, and (2) the
 5 violation was proximately caused by a person acting under color of state law. *See Crumpton v.*
 6 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is therefore to
 7 identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271
 8 (1994). To satisfy the second prong, a plaintiff must allege facts showing how individually
 9 named defendants caused, or personally participated in causing, the harm alleged in the
 10 complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). Sweeping conclusory
 11 allegations against an official are insufficient to state a claim for relief. *Leer v. Murphy*, 844 F.2d
 12 628, 633 (9th Cir. 1988). Further, a § 1983 suit cannot be based on vicarious liability alone, but
 13 must allege the defendant's own conduct violated the plaintiff's civil rights. *City of Canton v.*
 14 *Harris*, 489 U.S. 378, 385-90 (1989).

15 In the Complaint, Plaintiff fails to state the alleged wrong-doing of any individual who is
 16 acting under color of state law. *See* Dkt. 7. Moreover, Plaintiff has not alleged Defendants were
 17 acting with deliberate indifference; rather, he alleges Defendants acted negligently. Negligence
 18 does not give rise to a claim for deliberate indifference to a serious medical need. *See Estelle v.*
 19 *Gamble*, 429 U.S. 97, 106 (1976). As Plaintiff has not shown he suffered a violation of his
 20 constitutional rights that was caused by a person acting under color of state law, he has failed to
 21 state a claim upon which relief can be granted.

22 **III. Instructions to Plaintiff and the Clerk**

23 If Plaintiff intends to pursue a § 1983 civil rights action in this Court, he must file an
 24 amended complaint and within the amended complaint, he must write a short, plain statement

1 telling the Court: (1) the constitutional right Plaintiff believes was violated; (2) the name of the
2 person who violated the right; (3) exactly what the individual did or failed to do; (4) how the
3 action or inaction of the individual is connected to the violation of Plaintiff's constitutional
4 rights; and (5) what specific injury Plaintiff suffered because of the individual's conduct. *See*
5 *Rizzo v. Goode*, 423 U.S. 362, 371–72, 377 (1976). Each claim for relief must be simple,
6 concise, and direct.

7 Plaintiff shall present the amended complaint on the form provided by the Court. The
8 amended complaint must be legibly rewritten or retyped in its entirety, it should contain the same
9 case number, and it may not incorporate any part of the original complaint by reference. The
10 amended complaint will act as a complete substitute for any previously filed complaint, and not
11 as a supplement. The Court will screen the amended complaint to determine whether it contains
12 factual allegations linking each defendant to the alleged violations of Plaintiff's rights.

13 If Plaintiff fails to file an amended complaint or fails to adequately address the issues
14 raised herein on or before September 18, 2020, the undersigned will recommend dismissal of this
15 action.

16 The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C. § 1983
17 civil rights complaint. The Clerk is further directed to provide Plaintiff with copies of this Order
18 and Pro Se Instruction Sheet.

19 Dated this 17th day of August, 2020.

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22 David W. Christel
23 United States Magistrate Judge
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